



POLICE DEPARTMENT

April 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Joseph Davids
Tax Registry No. 880813
88 Precinct
Disciplinary Case No. 2012-8036

The above-named member of the Department appeared before me on January 15, 2015, charged with the following:

1. Said Lieutenant Joseph Davids, assigned to the 88 Precinct, while on duty on or about April 30, 2012, while acting in the capacity of Desk Officer, failed to ensure that currency recovered and vouchered by a Member of Service was delivered to the authorized bank for deposit to the night deposit vault, as required.

P.G. 218-36, Page 1, Paragraph 10 – PROPERTY - GENERAL - PROCESSING
NON-EVIDENCE CURRENCY

2. Said Lieutenant Joseph Davids, assigned as indicated in Specification No. 1, while on duty, on or about April 30, 2012, failed to make any entries to the Command Log regarding currency recovered and vouchered by a Member of Service, as required.

P.G. 218-36, Page 2, Paragraph 11 – PROPERTY - GENERAL - PROCESSING
NON-EVIDENCE CURRENCY

3. Said Lieutenant Joseph Davids, assigned as indicated in Specification No. 1, while on duty, on or about May 7, 2012, failed to perform his tour as designated by his Commanding Officer and was late for duty, to wit: said Lieutenant, scheduled to perform a 2300 X 0745 hours tour, instead performed an 0100 x 0945 hours tour, without receiving approval for the change of tour from a superior officer.

P.G. 202-13, Page 3, Paragraph 26(i) – DUTIES AND RESPONSIBILITIES -

P.G. 203-03, Page 1, Paragraph 3 – LIEUTENANT – PLATOON COMMANDER
GENERAL REGULATIONS COMPLIANCE
WITH ORDERS

4. Said Lieutenant Joseph Davids, assigned as indicated in Specification No. 1, while on duty, on or about May 10, 2012, having been instructed by his Commanding Officer to assign unassigned Members of Service to the designated 88 Precinct Burglary automobile, failed to comply with said instruction, in that said Lieutenant assigned unassigned Members of Service to Patrol Sector vehicles instead of to the designated Burglary automobile.

P.G. 203-03, Page 1, Paragraph 2 – GENERAL REGULATIONS
COMPLIANCE WITH ORDERS

P.G. 202-13, Page 1, Paragraph 6 – DUTIES AND RESPONSIBILITIES
LIEUTENANT - PLATOON COMMANDER

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and Respondent was represented by Philip Karasyk, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to Specification Nos. 1, 2, and 4. The Department Advocate (Advocate) moved to dismiss Specification No. 3. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty in Specification Nos. 1 and 2. The Department's motion to dismiss Specification No. 3 is granted. Respondent is found Not Guilty in Specification No. 4.

Specification Nos. 1 and 2Specification No. 1

Respondent has been charged with failing to ensure that currency recovered and vouchered by a Member of the Service (MOS) was delivered to the authorized bank for deposit to the night deposit vault.

Background

On April 30, 2012, Respondent was assigned as the midnight 88 Precinct desk officer replacement lieutenant. Desk officers have a duty to supervise the vouchering of property to ensure that it gets deposited in the designated account. Also, desk officers are required to make entries in the command log regarding the receipt and vouchering of the currency.

Around 2:00 a.m., \$80.00 was vouchered and presented to Respondent at the desk. Respondent entered the vouchered property into the Property Evidence Tracking System (PETS) system to account for the arrestee's property. The normal procedure would then be for the desk officer to instruct a MOS to deliver the property to the bank and place it in the depository box. However, as the night went on, Respondent forgot about the voucher and left it lying on the desk before ending his tour. The next day, May 1, 2012, the voucher was deposited by another desk officer at approximately 4:00 p.m. while Respondent was off-duty.

The Department's Case

The Department called Lieutenant Edward Bullock as a witness.

Lieutenant Edward Bullock

Bullock, the Integrity Control Officer (ICO) and third platoon commander of the 88 Precinct, conducted the investigation of this incident.

Bullock stated that during his Department interview with Respondent, Respondent alleged that there was a problem with the drop safe at the bank and the currency could not be deposited at that time. On June 20, 2013, Bullock spoke to a representative from the bank about whether the drop box worked between the dates of April 30, 2013 and June 20, 2013. The bank representative told him that the drop box did not become inoperable until after April 30, 2012 and was fixed on May 8, 2013. The box also became inoperable for a second time sometime around Memorial Day weekend.

On cross-examination, Bullock could not recall if he had asked the bank whether the cash box worked before April 30, 2012. When asked if in the *Patrol Guide* there is a specified time frame to ensure that vouchered currency be delivered to the bank night deposit vault, Bullock testified that there was no required time frame.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent testified that the night drop box "was very problematic on and off" and that other supervisors would complain about it. Sometimes there would be notes stating that the deposit key for the drop box was no longer working and that they needed to use their personal bank card to gain access to the bank. When asked how long this was going on for, Respondent stated, "I don't know if it was months or if it was a year or two." Respondent was concerned that the money would not go into the slot safely and that it could get taken by somebody else.

Respondent assumed that the currency was deposited the next day when it was no longer on his desk. He stated that, after April 30, "nobody ever came to me and said we can't find it. It was accounted for at all times, so I wasn't concerned." After receiving a Command Discipline, he looked in the command log and saw that another desk officer or supervisor deposited the money the next day. Respondent added, "I believe it was done at a time when the bank was open, to avoid using the safe box." He stressed that the money was never lost.

Findings

There was persuasive evidence that the bank had been experiencing problems as a result of nightly drop box overflow. The Department's own witness, Bullock, confirmed the difficulties with the night drop box. He testified that the bank representative verified that the drop box was inoperable on at least two separate occasions: some time after April

30, 2012 until May 8, 2012 and from May 30, 2012 through May 31, 2012. It was not clear exactly when after April 30, 2012 the drop box was not working. When the deposit box was overflowing with night drop deposits, deposits would not drop through into the vault properly. This could allow someone to pull out deposits by simply reaching their hand into the box. Because of the night deposit problem, Respondent did not want to put the vouchered deposit at risk.

However, *Patrol Guide 218-38* requires that a desk officer ensure that the currency recovered be delivered to the bank for deposit. Regardless of whether the voucher is deposited during the desk officer's tour, the desk officer must ensure that the vouchered currency ultimately be deposited. Although the vouchered currency was safely delivered and deposited the next day while Respondent was off-duty, it was accidental that another MOS found and delivered the money that was sitting on the front desk. Only after he received his Command Discipline did Respondent look in the command log to ensure that the currency was deposited by another MOS.

Accordingly, Respondent is found Guilty of Specification No. 1

Specification No. 2

Respondent is charged with failing to make entries in the command log regarding currency recovered and vouchered by a MOS.

Findings

Respondent admitted that he did not make an entry in the command log regarding the vouchered currency. Respondent testified that he put the voucher to the side and intended to pick a trustworthy team to inspect the drop box to make sure it was working

properly before dropping in the vouchered money. However, because he was consumed with other duties, he disregarded the voucher as the night went on. Respondent explained that he forgot to make a command log entry because ordinarily he would have made an entry at the same time a MOS was sent to deliver the voucher.

Leaving a note or an entry for other MOS explaining what had happened and that the money needed to be deposited in the morning would have properly safeguarded the voucher. Respondent, as a desk officer, was required to write a command log entry stating the reasons for the delayed deposit to the drop box. Forgetting is not a valid excuse.

Accordingly, Respondent is found Guilty of Specification No. 2.

Specification No. 4

Respondent has been charged with failing to comply with instruction from his Commanding Officer (CO) on May 10, 2012 where, instead of assigning MOS to the designated burglary automobile, he assigned MOS to Patrol Sector vehicles.

Background

On May 10, 2012, Respondent was assigned as the 88 Precinct Lieutenant desk officer. At some point during his tour, Respondent assigned MOS to five patrol sector cars. The CO claimed that he ordered Respondent to designate the fifth sector a burglary automobile, which Respondent did not do.

Henderson was informed by a sergeant that Respondent told other supervisors that he did not want to put out a burglary car because then he would be expected to have

enforcement activity. The sergeant also told Henderson that Respondent failed to follow the burglary car instruction. Respondent maintained that the conversation was misconstrued. He stated he and other supervisors were discussing a hypothetical situation about what they would do if they had a fifth automobile.

The Department's Case

The Department called Lieutenant Edward Bullock and Deputy Inspector Scott Henderson as witnesses.

Deputy Inspector Scott Henderson

Henderson, the CO, testified that he would write daily instructions on the roll call adjustment sheet to make MOS aware of certain assignments or directives. Henderson would also hold platoon commander meetings with lieutenants where he would go over crime and activity. He stated that during one of these meetings, he informally spoke to supervisors about a burglary car mandate. The mandate directed all lieutenants to assign burglary units to every available fifth car. These burglary units would concentrate only on the burglary problems in the 88 Precinct.

Henderson stated that he was not certain of the date when he issued the burglary car command and had no direct recollection of Respondent being present during the meeting. Also, the roll call adjustment sheet from May 10, 2012 did not specify any instructions concerning the burglary car mandate.

Henderson was not present at the roll call on May 10 but heard rumors alleging that Respondent told MOS that he was not going to send out a burglary car. He stated that, on May 10 or May 11, he had a conversation with Respondent before writing the command discipline. Henderson explained that he wanted to know what Respondent said

about the burglary car during his conversation with the other supervisors. Henderson stated that Respondent did not give a valid reason for not sending out a burglary car. Respondent never indicated to Henderson whether he knew or did not know about the order. Henderson stated, "I assumed that he [Respondent] was aware."

On cross-examination, Henderson stated, "If he [Respondent] would have told me that he was not aware of that directive, I've always considered myself to be a fair and reasonable person. If I had believed that he was not aware of that directive, then I would not have directed that a command discipline was issued."

Lieutenant Edward Bullock

Bullock, the ICO, testified that he had no knowledge of Henderson's burglary car mandate before May 10, 2012. Bullock stated that he had never seen the burglary car mandate in writing and never overheard Henderson speak about the mandate to any other MOS. The first time he heard about the burglary car was after Henderson told him about Respondent's violation of the directive. While he was present for platoon commander meetings, Bullock never heard Henderson discuss the issue of a potential burglary car mandate.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent denied having any knowledge of Henderson's mandate with respect to the burglary cars. When asked about the mandate, he stated, "I had no idea, no knowledge whatsoever of it." Respondent stated that before May 10, he never read a notice about the mandate, nor did he ever have a conversation with Henderson about it.

Respondent explained that he learned about the burglary car mandate only after receiving a Command Discipline for failing to follow instruction. Respondent maintained that after his Command Discipline, he confronted Henderson and told him that he was unaware of his wishes for a burglary auto. Henderson brought up Respondent's rumored conversation with other supervisors about the burglary car. Respondent said that the conversation was only about a hypothetical situation of what he and the other supervisors would do if they had a fifth auto. He added, "I believe that my words were misconstrued. He thought that I purposely didn't follow a directive that I had no idea about."

When asked what he would have done if he had known about the mandate, Respondent stated, "I would have definitely called for the fifth car to be the burglary auto and told them to address burglaries." He added, "I follow the highest, I follow whatever orders that I'm given at all times and if something is mandated, I do it."

Analysis

The Department has not met its burden in demonstrating that Respondent intentionally failed to comply with a burglary car instruction on May 10, 2012.

Henderson offered no persuasive evidence demonstrating that he gave Respondent the order to assign officers to the designated burglary automobile. He was unable to produce any confirmation showing that his wishes about the burglary car were conveyed to Respondent, either in verbal or written form. Henderson testified that he would often write his mandates on a roll call sheet as a way of informing the supervisors of his wishes. However, neither of the two roll call sheets during the relevant time period mentioned Henderson's burglary mandate.

Both Respondent and Bullock credibly testified that they had no knowledge of Henderson's burglary car instruction. Both stated that they had never seen a burglary mandate in writing or heard about it at commander meetings.

The evidence presented by the Department failed to demonstrate that Respondent was given the burglary car instruction. Therefore, the Court credits Respondent's testimony that he was never given this instruction. Respondent cannot be found to have failed to follow an order he was never given.

Accordingly, Respondent is found Not Guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 25, 1983. Information from his personnel

record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended the forfeiture of 10 vacations days as the appropriate penalty for the misconduct alleged in all three specifications. However, Respondent was found Guilty of only two specifications. A lower penalty is warranted in this case.

While Respondent's reasons for his actions on April 30, 2012 did not excuse him from guilt, they provide mitigation. The evidence established that the night box had a high risk of being faulty and any deposit would not be safe. Rightly so, this was a risk that Respondent was not willing to take. While Respondent failed to take the required steps to ensure that the vouchered currency was to be delivered when the bank was open during normal hours, no serious consequences occurred because of Respondent's forgetfulness. The voucher was safely deposited by another MOS the next day.

In fashioning its penalty recommendation, the Court has considered penalties for failing to follow procedures and for failing to make a command log entry. In one case, a thirteen-year sergeant with no prior disciplinary record forfeited five vacation days for failing to direct and ensure that a UF-250 was prepared. *Case No. 83041/07* (June 30, 2010). In *Case No. 78950/03* (June 13, 2005), a nineteen-year member forfeited five vacation days for failing to safeguard \$8450.00. In a third case, an eight year police officer forfeited five vacation days for failing to ensure that an arrestee was transported to the nearest hospital facility and for failing to prepare the Property Clerk's Invoice. *Case No. 1594/10* (December 27, 2012).

Thus, the penalty sought by the Advocate is disproportionate to the misconduct committed by Respondent. Based on the foregoing precedent, the lack of serious

consequences, and Respondent's prior disciplinary history, it is recommended that Respondent forfeit a penalty of five vacation days.

Respectfully submitted,

Amy J. Porter ^{pm}

Amy J. Porter
Assistant Deputy Commissioner – Trials

APPROVED

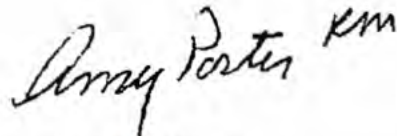
JUL 27 2018
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT JOSEPH DAVIDS
TAX REGISTRY NO. 880813
DISCIPLINARY CASE NO. 2012-8036

In 2013, Respondent received an overall rating of 3.0 “Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2011 and 2012. He has been awarded three medals for Excellent Police Duty. [REDACTED]
[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials